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21 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

22 AIRWAIR INTERNATIONAL LTD., a  
 23 company of the United Kingdom,

24 Plaintiff,

25 vs.

26 ZOETOP BUSINESS CO., LIMITED d/b/a  
 27 SHEIN and ROMWE, a Hong Kong  
 28 corporation, and DOES 1-50,

29 Defendants.

30 Case No. 3:20-cv-07696-SI

31 (Related Case No. 3:24-cv-08437-WHO)

32 **ADMINISTRATIVE MOTION OF**  
**PLAINTIFF AIRWAIR**  
**INTERNATIONAL LTD. TO CONSIDER**  
**WHETHER CASES SHOULD BE**  
**RELATED; MEMORANDUM OF**  
**POINTS AND AUTHORITIES IN**  
**SUPPORT**

33 **[CIVIL LOCAL RULE 3-12]**

**TO ALL PARTIES, THEIR COUNSEL OF RECORD, AND THE CLERK OF THE  
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
CALIFORNIA:**

**PLEASE TAKE NOTICE** that pursuant to Civil Local Rule 3-12 of the above-entitled Court, Plaintiff AirWair International Ltd. (“Plaintiff”) hereby submits this motion requesting that the Court consider whether the newly filed case against *ZoeTop Business Co., Ltd. d/b/a SHEIN* (N.D. Cal. Case No. 3:24-cv-08437), is related to *AirWair International Ltd. v. ZoeTop Business Co., Ltd. d/b/a SHEIN and ROMWE, et al.* (N.D. Cal. Case No. 3:20-cv-07696-SI) (the “Prior ZoeTop Action”).

This Administrative Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the pleadings and papers on file in this action, and such other and further matters as the Court may consider. Defendant Zoetop Business Co., Ltd. consents to this Motion.

Dated: December 4, 2024

## **BRYAN CAVE LEIGHTON PAISNER LLP**

By: /s/ K. Lee Marshall  
Kenneth Lee Marshall  
Attorneys for Plaintiff  
AIRWAIR INTERNATIONAL LTD.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

## **I. INTRODUCTION**

3 With the consent of Defendant Zoetop Business Co., Ltd., Plaintiff AirWair International  
4 Ltd. requests that the Court grant its Administrative Motion to relate the “Prior ZoeTop Action,”  
5 *AirWair International Ltd. v. ZoeTop Business Co., Ltd. d/b/a SHEIN and ROMWE, et al.* (N.D.  
6 Cal. Case No. 3:20-cv-07696-SI), to the newly filed case against ZoeTop Business Co., Ltd. d/b/a  
7 SHEIN (N.D. Cal. Case No. 3:24-cv-08437). Both cases involve the same Plaintiff and Defendant,  
8 assert the same alleged infringement of the same trademarks for Dr. Martens® boots and shoes,  
9 and are substantially similar in their allegations. Additionally, the newly filed case alleges that the  
10 settlement agreement resolving the Prior ZoeTop Action has been breached. Thus, it is likely that  
11 there will be an unduly burdensome duplication of labor and expense or conflicting results if the  
12 cases are conducted before different judges. The Prior ZoeTop Action was heard by the Honorable  
13 Susan Illston and Plaintiff believes that judicial efficiency and avoidance of duplication of labor  
14 will be achieved if the newly filed ZoeTop Action is also heard by Judge Illston.

## II. FACTUAL BACKGROUND

16 On November 2, 2020, Plaintiff filed a lawsuit against ZoeTop in the Northern District of  
17 California, styled *Airwair International Ltd. v. Zoetop Business Co. Ltd.*, Case No. 3:20-cv-07696,  
18 alleging claims for federal trademark infringement, federal false designation of origin, trademark  
19 dilution, California statutory unfair competition, common law unfair competition, and California  
20 statutory trademark dilution. The Prior ZoeTop Action initially was assigned to the Honorable  
21 Virginia K. DeMarchi. On November 10, 2020, this Court granted Plaintiff's Motion to Relate and  
22 the Prior ZoeTop Action was reassigned to Judge Susan Illston, who presided over the case  
23 through its dismissal pursuant to a settlement agreement.

24 The Prior ZoeTop Action alleged that Plaintiff own rights for various trade dress, both  
25 unregistered and subject to several U.S. trademark registrations in the United States Patent and  
26 Trademark Office and that the ZoeTop Defendants manufactured, marketed, distributed, and sold  
27 boots that were confusingly similar to Plaintiff's registered and unregistered trademark rights. (See  
28 ECF No. 1.) The case ultimately settled and was dismissed on February 24, 2022. (ECF No. 105.)

1 The Settlement Agreement reached between Plaintiff and ZoeTop provides that any dispute related  
 2 to the enforcement of the Settlement Agreement may be heard in this judicial District before the  
 3 Honorable Susan Illston.

4 With Defendant's consent, Plaintiff now seeks to relate the newly filed ZoeTop Action to  
 5 the Prior ZoeTop Action.

6 **III. THE NEWLY FILED ZOETOP ACTION AND THE PRIOR ZOETOP ACTION  
 7 ARE RELATED CASES.**

8 Pursuant to Local Rule 3-12, “[a]n action is related to another when: (1) The actions  
 9 concern substantially the same parties, property, transaction or event; and (2) It appears likely that  
 10 there will be an unduly burdensome duplication of labor and expense or conflicting results if the  
 11 cases are conducted before different Judges.”

12 The newly filed ZoeTop Action and the Prior ZoeTop Action involve the same Plaintiff  
 13 and Defendant, allege largely the same causes of action arising out of the infringement of the same  
 14 trade dress marks for Dr. Martens® boots and shoes, and are substantially similar in their  
 15 allegations. Additionally, the newly filed case asserts claims that the settlement agreement  
 16 resolving the Prior ZoeTop Action has been breached. It is therefore likely that there will be an  
 17 unduly burdensome duplication of labor and expense or conflicting results if the cases are  
 18 conducted before different judges. Indeed, this fact was recognized by this Court when it related  
 19 the Prior ZoeTop Action to *AirWair International Ltd. v. Forever 21, Inc., et al.* (N.D. Cal. Case  
 20 No. 3:09-cv-3575) (see ECF No. 7), which involved the same causes of action arising out of  
 21 infringement of the same Trade Dress Marks for Dr. Martens® boots and shoes, albeit in that case  
 22 against a different defendant. For the same reasons and more, the newly filed ZoeTop Action  
 23 should also be deemed related to the Prior ZoeTop Action.

24 Further, pursuant to Paragraph 16 of the Settlement Agreement, the parties agree that the  
 25 newly filed ZoeTop Action may be specifically heard by Judge Illston, who has previously  
 26 presided over the aforementioned cases in this District and is perhaps best situated to preside over  
 27 claims that the parties' settlement agreement has been breached.

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1 As of the date of the filing of this Motion, Plaintiff is not aware of any other actions  
2 pending in another state or federal court that involve all or a material part of the same subject  
3 matter and all or substantially all of the same parties as this action.

4 **IV. CONCLUSION**

5 For the foregoing reasons, Plaintiff respectfully requests that this Court grant its  
6 Administrative Motion to Consider Whether Cases Should be Related, thereby relating the newly  
7 filed ZoeTop Action to the Prior ZoeTop Action.

8  
9 Dated: December 4, 2024

**BRYAN CAVE LEIGHTON PAISNER LLP**

10  
11 By: /s/ K. Lee Marshall  
12 Kenneth Lee Marshall

13 Attorneys for Plaintiff  
14 AIRWAIR INTERNATIONAL LTD.

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